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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/734,826	12/11/2000	Thomas Fiedler	PHO 99,556	5531

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS  
P.O. BOX 3001  
BRIARCLIFF MANOR, NY 10510

EXAMINER

HARPER, V PAUL

ART UNIT	PAPER NUMBER
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2654

10

DATE MAILED: 04/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/734,826

Applicant(s)

FIEDLER, THOMAS

Examiner

V. Paul Harper

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
RICHMOND DORVIL  
SUPERVISORY PATENT EXAMINER

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 3/15/04 have been fully considered but they are not persuasive.

2. Applicant asserts on page 3:

This passage, however, merely mentions that the Uehara servomechanism 14 points the microphone 12 somewhere within a range (col. 2, line 47: "range") that spans all possible microphone directions. There is no disclosure or suggestion of "in the event of deviations ... relative to the nominal range (XY) ... adjusting . . . to adjust the picture recording means (31) so that the recorded body area lies within the nominal range (XY)" as explicitly required by the language of claim 1.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Uehara teaches that that the "picture processor (detecting means) 24 obtains information related to the position of the person's mouth" (col. 2, line 65-66) and that the "position of the mouth is supplied to the controller (determining means) 18 for determining the direction of the microphone (col. 2, line 67 through col. 3, line 3). As stated in the rejection of claim 1, the adjustment of the picture recording means is taught by Shirai (English abstract, ¶10, Figs. 1, 2, and 5) and the mounting of both the

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picture recording means and microphone together is taught by Schaffrina (abstract, col. 1, lines 9-12).

3. Applicant asserts on page 4:

Item I of the Office Action says, in effect, that the Shirai automatic adjusting of a camera vertically would have suggested a similar automatic vertical adjustment to the camera 22 in FIG. 2 of Uehara, but acknowledges that the combination would still not feature vertical movement of the Uehara microphone 12. To make up for the deficit, Schaffrina is cited, which is directed to a video telephone box having a user panel including a screen and video camera. A microphone is located on either side of the screen. The height of the user panel may be adjusted to suit the user. The user panel allows inputs in the form of push button selections. It is clear from this description and the drawing that the user panel is manually adjusted by the user to match his or her height. By contrast, and as mentioned above, Uehara deals with a system that operates automatically without user intervention other than speech. It is not clear how Schaffrina can be fairly said to teach detachment of the Uehara microphone 12 from its tilting servo mechanism and movement of the detached microphone into fixed connection with the movable camera.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Uehara discloses a system where a microphone is automatically movable to improve the quality of the S/N using a picture processor (Fig. 1, col. 5, lines 15-22), and Shirai discloses a system where a camera is automatically movable to adjust an image (abstract). In addition, Schaffrina discloses a kiosk where a video camera and a microphone are *mounted together* in a module that is height adjustable to suit the user

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(abstract, col. 1, lines 40-55) and improve the images being recorded (Schaffrina translation, p. 2, lines 9-12). As argued in the rejection of claim 1, the Examiner maintains that it would have been obvious and desirable to combine the automatic adjustability of Shirai and Uehara with the mounting arrangement of Schaffrina.

4. Applicant asserts on page 5:

Uehara, in fact, teaches away from the idea of modifying its microphone configuration. Although Uehara recognizes the voice recognition is a developing area (col. 1, lines 50-52), and that its voice recognition technology may require the speaker to repeat words and to enunciate more slowly (col. 4, lines 53-56), Uehara reveals not the slightest hint that its microphone 12 of sharp directivity is other than optimal (col. 3, lines 41-43: "Control of the direction of the microphone 12, is one of the distinctive features of the present apparatus"; col. 5, lines 11-20: "According to the present apparatus, the microphone 12 with a sharp directivity can be effectively directed toward the mouth of the person C, thereby resulting in reliable collection of the speech made by the person at a high S/N ratio. The sharply directional microphone 12 used herewith can be provided at a distance from the person C without any loss in S/N ratio. Consequently, the person can speak unaffected by the presence of the microphone 12, and the person will not feel that he is forced to speak to the system.")

Uehara (col. 3, lines 41-43) does not state that the disclosed configuration is optimal, nor that there is not some other way to obtain better results.

Furthermore, contrary to teaching away from the microphone configuration suggested by Schaffrina, Uehara actually supplies a motivation for using the approach.

Uehara states that "the person can speak unaffected by the presence of the microphone 12, and the person will not feel that he is forced to speak to the system." (col. 5, lines

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17-20) The Examiner feels that a microphone "tracking" an individual (see Uehara Fig. 2) would certainly make its presence known, where in the approach taken by Schaffrina, the microphone is mounted in a side panel (easily hidden), and a user would be far less affected by its presence.

5. Applicant asserts on page 6:

In contrast to Uehara's touting of the optimality of its microphone configuration, Schaffrina suggests that its microphones are located "on either side" of the screen, a camera is concealed behind the screen ("Detailed Description"; sixth paragraph), and the height of the user panel embodying the screen may be adjusted by user to suit the user. Since the camera is concealed, presumably then the user either adjusts the panel's vertical location so that either the screen is in optimal visual range, i.e., vertically centered about the user's face, or so that the microphone is in optimal vocal range, i.e., vertically aligned with the user's mouth, or, alternatively, reach some compromise between the two panel positions. *The user cannot achieve both optimizations simultaneously, because this would place the microphone at the bottom the screen, whereas Schaffrina specifies that the microphone is disposed "on either side" of the screen.* It follows that Schaffrina fails to disclose or suggest that both the camera and microphone, while fixed to the same vertical translator, can be simultaneously positioned optimally. Therefore, it appears that item 1 of the Office Action is suggesting that motivation would have existed to sacrifice Uehara optimality, assuming one is not selectively ignoring Uehara's claim of optimality, by modifying Uehara or Uehara/Shirai in view of Schaffrina. (Italics added)

The Examiner maintains that the positioning of the camera as taught by Shirai (e.g., see Figs. 7 and 11) would position the camera to capture an image of the face of the individual, and that since the position of the mouth is well known on the face (see Shirai, Fig. 11, item y1), the camera and side mounted microphones of Schaffrina (with fixed relative position) would not cause a

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problem when trying to perform simultaneous camera and microphone positioning (e.g., when the camera is brought to an appropriate vertical position the fixed relative position of the microphones with respect to the camera would be also be appropriately positioned relative to the individual's mouth).

6. Applicant asserts beginning on page 6:

What in any of the applied prior art references, alone or in combination, would have shown, suggested or given even the slightest hint to one of ordinary skill in the art that fixing both the camera and the microphone to the same vertical translator could be made to improve on Uehara's touted optimality?

At page 4, item 1 of the Office Action offers, by way of explanation, that *"it was well-know that closer proximity of both a camera and a microphone will improve the quality of the data obtained by each device."* Proximity to what? Presumably the Examiner is referring to "proximity to the subject," not to proximity between the camera and the microphone. How close is too close? That is, a microphone held too close to the speaker experiences noise. Having modified Uehara in view of Shirai, what would have motivated one of ordinary skill in the art to, in view of Schaffrina, relocate the microphone onto the same vertically movable platform as the camera? Impermissible hindsight of an Examiner who has looked at FIG. 1 and/or 2 of the present invention's disclosure. (Italics added)

The phrase being commented on here (in italics above) was given in claim 1 as a motivation for combining. The constraints of Schaffrina's teachings (i.e., the natural positioning of camera, microphone and user within the kiosk) would most likely preclude the case of the microphone being so close as to cause noise, and hence, a closer proximity with the user would improve the quality of the audio and video data.

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**Conclusion**

Any response to this office action should be mailed to:

Commissioner of Patents and Trademarks  
P.O. Box 1450  
Alexandria, VA 22313-1450

or faxed to:

(703) 872-9314

Hand-delivered responses should be brought to:

Crystal Park II  
2121 Crystal Drive  
Arlington, VA.  
Sixth Floor (Receptionist)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. V. Paul Harper whose telephone number is (703) 305-4197. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richemond Dorvil, can be reached on (703) 305-9645. The fax phone number for the Technology Center 2600 is (703) 872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service office whose telephone number is (703) 306-0377.



VPH/vph  
March 24, 2004